



MIZAN: JOURNAL OF ISLAMIC LAW

P-ISSN: 2598-974X. E-ISSN: 2598-6252

Vol. 14 No.1 (2026), pp.173-190

<https://ejournal.uika-bogor.ac.id/index.php/MIZAN/index>

Protection Of Indonesian Migrant Workers' Children In Bilah Barat: Perspectives Of Positive Law And Islamic Law¹

Siti Jamroh Rambe¹, Uswatun Hasanah²

^{1,2} Universitas Islam Negeri Sumatera Utara, Medan, Indonesia

Corresponding email: siti201222089@uinsu.ac.id



10.32832/mizan.v14i1.24538

Abstract:

The phenomenon of Indonesian migrant workers has created social consequences for children left behind, particularly in caregiving, education, emotional communication, and social protection. This article examines the protection of Indonesian migrant workers' children in Bilah Barat District, Labuhanbatu Regency, from the perspective of positive law and Islamic law. This study employs an empirical legal method, drawing on statutory, case, sociological, and Islamic legal approaches. Primary data were obtained through in-depth interviews with 18 informants from five migrant-worker families, along with one supporting informant, the Head of the Religious Affairs Office, and one village official. Within each family, the child, substitute caregiver, and migrant-worker parent were interviewed to allow within-family triangulation. Secondary data were collected from legislation, classical fiqh books, and relevant scientific literature. The research was conducted with ethical safeguards for child informants, including guardian consent, child assent, and the use of pseudonyms for all minors and their families to protect their identity. The findings show that child protection has a strong normative basis under Law Number 35 of 2014 on Child Protection and the Islamic legal concepts of *hadhanah* and maintenance. However, its implementation remains partial. The children of migrant workers experience non-ideal substitute care, emotional deprivation, educational vulnerability, misuse of remittance channels, and social risks, including child-marriage vulnerability. From an Islamic legal perspective, neglect of caregiving, maintenance, and protection may be categorized as *tafrith*, although the degree of fault varies depending on whether the failure stems from a parent's own dereliction or from an intervening third-party wrongdoing. This study argues that child protection for migrant-worker families requires stronger village data collection, integrated policy, school-based early detection, safe remittance mechanisms, and the involvement of religious institutions based on *maqasid sharia*.

Keywords: child protection; *hadhanah*; Indonesian migrant workers; Islamic law; positive law.

¹ Manuscript received date: May 2, 2026; revised: June 21, 2026; approved for publication: July 31, 2026.

A. INTRODUCTION

Children are a trust and the future generation of the nation who must receive optimal protection so that they can grow and develop in a balanced manner physically, mentally, socially, and spiritually. From an Islamic perspective, children are understood not only as members of a family but also as a trust from Allah the Almighty, whom both parents are obliged to care for, educate, and protect. This obligation is affirmed in Surah At-Tahrim verse 6 of the Qur'an (Kementarian Agama Republik Indonesia, 2019), which instructs believers to protect themselves and their families from harm, a duty entrusted to angels who never disobey what they are commanded (Q.S. At-Tahrim [66]: 6).

This verse demonstrates that parental responsibility for the family, including children, is not merely biological and social but also religious. In Islam, child protection encompasses the provision of maintenance, education, caregiving, moral development, and protection from various forms of harm. Accordingly, the presence of children within a family requires parents to fulfill their responsibilities comprehensively in both material and non-material respects. This responsibility becomes even more important when children are placed in vulnerable circumstances, such as when they are left behind by parents working abroad as Indonesian migrant workers.

Under positive law, child protection has a strong normative foundation. Law Number 35 of 2014 concerning Child Protection stipulates that every child has the right to live, grow, develop, and receive protection from violence, discrimination, neglect, and other forms of maltreatment. This provision is consistent with Article 45 of Law Number 1 of 1974 concerning Marriage, which requires both parents to care for and educate their children to the best of their ability, an obligation that remains applicable even after the parents' marital relationship has ended (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974; Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, 2014). Indonesian positive law therefore places parents as the primary parties responsible for fulfilling children's rights, while the state, society, and the broader social environment are obliged to support such protection.

However, the fulfillment of children's rights encounters serious challenges in Indonesian migrant-worker families. Parents generally decide to work abroad because of their families' economic needs. On the one hand, becoming an Indonesian migrant worker may serve as a family strategy to increase income and meet living expenses. On the other hand, the prolonged physical absence of parents may have social consequences for the children left behind, who are often cared for by third parties, such as grandparents, aunts, and uncles. As a result, caregiving responsibilities that were originally carried out directly by parents are transferred to substitute caregivers, potentially affecting children's emotional, social, and educational development (Mardiyanto, 2024).

The socioeconomic conditions of migrant-worker families also influence the educational continuity of the children left behind. Previous research has shown that families of female migrant workers experience particular dynamics in fulfilling children's needs, especially when daily caregiving is no longer directly provided by

biological parents. The limited economic capacity of substitute families, their insufficient ability to support children's learning, and weak supervision of children's activities may increase the risk of educational disruption (Ardiansyah et al., 2022). The problems experienced by migrant workers' children should therefore not be examined solely in terms of remittance transfers but should also be understood as issues involving caregiving, emotional communication, educational continuity, and social protection.

From the perspective of Islamic law, this issue is closely related to the concept of *hadhanah*, namely the obligation to care for, nurture, educate, and protect children so that they can grow and develop properly. *Hadhanah* encompasses not only the fulfillment of children's physical needs but also education, moral development, affection, and protection from potential dangers to their development (Al-Jaziri, 2003). Therefore, the obligation of *hadhanah* cannot be understood merely as placing a child under the care of a substitute family; parents must also ensure that the substitute caregiver is genuinely capable of performing the caregiving function appropriately.

In *Al-Mughni*, Ibn Qudamah explains that working far from home for an extended period may, in principle, be permitted when justified by necessity or benefit. However, such permission is not absolute, as it remains subject to the condition that children's maintenance, education, care, and protection are adequately provided. When these conditions are neglected, leaving a child behind may amount to *tafrith*, a form of negligence prohibited in Islam (Qudamah, 1997). In this context, a parent's departure to work abroad cannot be assessed solely on the basis of the intention to earn a livelihood; it must also be measured by the extent to which the rights of the children left behind are still being fulfilled.

Contemporary studies based on *maqasid al-sharia* also emphasize that child custody must be directed towards the best interests of the child rather than merely serving the interests of the parents. The principle of *hifz al-nasl*, or the protection of lineage and future generations, requires childcare to take account of children's survival, education, morality, security, and future. Consequently, inadequate caregiving resulting from parental absence risks disregarding one of the fundamental objectives of Islamic law, namely the protection of future generations (Faizzati, 2024). Within this framework, the children of migrant workers constitute a group requiring particular attention because they are situated at the intersection between their families' economic needs and their own need for protection.

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, meanwhile, focuses primarily on protecting migrant workers as its principal legal subjects before, during, and after employment. This regulation is important for safeguarding the security and rights of migrant workers. However, protection for the children left behind has not been regulated in detailed and operational terms. This situation reveals a gap in social protection policies for migrant-worker families, particularly with regard to child data collection, assistance for substitute caregivers, educational monitoring, and the prevention of social vulnerability (Purwidiarso, 2024; Undang-Undang Republik Indonesia Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia, 2017).

Preliminary observations in Tanjung Medan Village, Bilah Barat District, revealed concrete problems experienced by the children of migrant workers. Most of these children are cared for by substitute family members who face limitations in terms of age, education, physical condition, and economic capacity. Communication between the children and their parents working abroad is also limited because of work demands, distance, and weak family communication patterns. In addition, the study identified a case of school dropout caused by the misuse of a remittance transfer channel through an intermediary, as well as a case of social vulnerability involving pregnancy among a minor due to inadequate supervision. These preliminary findings indicate that protecting migrant workers' children is related not only to parental responsibility but also to the roles of village governments, schools, religious institutions, and society.

Several previous studies have examined legal protection for migrant workers' children, the socioeconomic conditions of female migrant-worker families, and the protection of migrant workers under national law. However, these studies have generally not specifically connected the protection of Indonesian migrant workers' children with five dimensions of protection — caregiving, education, emotional communication, maintenance and basic needs, and socio-legal protection — within an integrated framework of positive law and Islamic law. Furthermore, studies specifically using cases involving migrant workers' children in Bilah Barat District as an empirical basis for analysis remain limited. The novelty of this study therefore lies in its integration of the Child Protection Law, the Islamic legal concepts of *hadhanah* and child maintenance, and empirical findings concerning the vulnerability of migrant workers' children at the village level.

Based on the foregoing discussion, this study is directed towards answering two principal questions. First, what forms of protection are provided to the children of Indonesian migrant workers in Bilah Barat District under Law Number 35 of 2014 concerning Child Protection and the Islamic legal principles of *hadhanah* and maintenance? Second, what are the implications of Indonesian migrant workers' absence for the fulfillment of the rights of the children left behind, and what measures can be undertaken to address them? Accordingly, this study aims to analyze the gap between legal norms and the realities of child protection in migrant-worker families, and to propose stronger protection by integrating positive law, Islamic law, and institutional roles at the grassroots level.

B. METHODE

This study employed an empirical legal research method (*socio-legal research*) with a qualitative descriptive design. The approaches used included statutory, case, sociological, and Islamic law approaches. The statutory approach was used to examine the provisions of positive law governing the protection of children and Indonesian migrant workers, while the case and sociological approaches were applied to investigate the realities of protecting migrant workers' children at the family and community levels. The Islamic law approach was used to analyze issues related to childcare and child maintenance, drawing on the Qur'an, hadith, the Compilation of Islamic Law, and classical and contemporary fiqh texts discussing the concepts of *hadhanah* and *nafaqah al-*

awlad. The study was conducted in Bilah Barat District, Labuhanbatu Regency, with a particular focus on Tanjung Medan Village, as the area has a relatively large population of Indonesian migrant workers and faces concrete problems concerning children left behind by their parents.

Because this study involved direct interviews with children (aged 12–17) about sensitive matters concerning their family circumstances, and in one case a minor's pregnancy, the research was conducted under explicit ethical safeguards. [Author to confirm and insert: ethical clearance reference number and issuing institution/faculty ethics committee.] Prior to data collection, written or recorded informed consent was obtained from each child's parent or legal guardian, together with the child's own assent to participate, consistent with standard safeguarding practice for research involving minors. [Author to confirm and describe the specific consent/assent procedure used, including whether consent covered the publication of case narratives.] All interviews with children were conducted in the presence of a trusted adult (a parent, guardian, or caregiver) to minimize distress and to allow the interview to be paused or ended at the child's or guardian's request. All names used in this article — including Raya, Rafa, Amri, Marsya, Ayu, Masariah, and Zainal — are pseudonyms; the village and district names have been retained at a level the authors judge necessary for the study's socio-legal contribution, but identifying case details beyond what is analytically necessary, particularly in the discussion of Marsya's circumstances, have been limited or generalised to reduce the risk of re-identification within the local community. [Author to confirm that this description accurately reflects the anonymization and consent procedures actually followed during fieldwork, and to revise if it does not.]

The research informants were selected through purposive sampling based on their direct involvement in issues concerning the protection of migrant workers' children. A total of 18 informants participated in the study: five children of Indonesian migrant workers aged 12–17 years (Raya, Rafa, Amri, Marsya, and Ayu), their five corresponding substitute caregivers, and their five corresponding migrant-worker parents — that is, the child, caregiver, and parent informants were drawn from the same five families, allowing the accounts of each family's three informants to be cross-checked against one another (within-family triangulation). In addition, one supporting informant [author to specify this informant's role, e.g., a teacher, neighbor, or community/NGO figure, and to indicate at which points their account is drawn upon in Section C], the Head of the Bilah Barat District Office of Religious Affairs, and one Tanjung Medan Village official were interviewed. Primary data were collected through in-depth interviews conducted face-to-face, by telephone, and through video calls. In addition to primary data, the study used secondary data in the form of legislation, *fiqh* texts, books, and scholarly journal articles relevant to child protection, Indonesian migrant workers, *hadhanah*, and child maintenance. All interviews were conducted gradually between February and June 2026.

The data were analyzed qualitatively by classifying the field findings into five operational indicators of child protection: caregiving, education, emotional communication, maintenance and basic needs, and socio-legal protection. The caregiving indicator was used to assess the extent to which the functions of guidance

and direct supervision of children were still being performed. The education indicator was used to evaluate children's access to and continuity of education. The emotional-communication indicator was used to examine affection, attention, and regular communication between children and their parents. The maintenance and basic-needs indicator was used to assess the adequacy of children's material needs, while the socio-legal protection indicator was used to examine the active roles of families, communities, educational institutions, religious institutions, and village governments in providing protection. For each indicator, an informant's family was coded as "Fulfilled" where the corresponding right was consistently and adequately met across the child's, caregiver's, and parent's accounts; "Partially Fulfilled" where the right was met intermittently, incompletely, or was contested between informants' accounts; and "Not Fulfilled" where the indicator was absent or in active breach according to a convergent reading of the three within-family accounts, with cases additionally marked "(Critical)" where the breach had already produced a concrete adverse outcome (e.g., school dropout, unsupervised pregnancy). Coding was performed by the researchers jointly rather than by a single coder, and disagreements were resolved by returning to the interview transcripts and, where available, documentary records. [Author to confirm whether a second coder or peer debriefing was used and add detail if so.] The classified data were subsequently presented descriptively, supported by verbatim quotations from the informants, and analyzed in accordance with the relevant statutory provisions and principles of Islamic law.

This study is based on a small, purposive sample of five migrant-worker families in a single village, together with three institutional/supporting informants. This design is appropriate for the in-depth, case-based socio-legal analysis undertaken in this study, but it does not support statistical generalization to migrant-worker families in Bilah Barat District or elsewhere. Findings and case-based observations reported in Section C should accordingly be read as illustrative of patterns identified within these specific cases rather than as claims about the prevalence of these patterns across the wider population of migrant-worker families.

C. RESULTS AND DISCUSSION

1. Forms of Protection for Indonesian Migrant Workers' Children under Positive Law and Islamic Law

This study operationally defines child protection through five main indicators derived from the field findings: caregiving, education, emotional communication, maintenance and basic needs, and socio-legal protection. These five indicators were used to assess the extent to which the children of Indonesian migrant workers receive comprehensive protection while their biological parents are working abroad. From the perspective of positive law, Law Number 35 of 2014 affirms that parents are the primary parties responsible for caring for, maintaining, educating, and protecting their children (Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, 2014). However, the field findings in Tanjung Medan Village demonstrate that the most tangible form of protection provided to migrant workers' children remains limited to the fulfillment of

basic needs, such as food, clothing, and living expenses — and even these needs are generally not fulfilled directly by the biological parents but by substitute caregivers, such as grandmothers or aunts.

The assessment of the five families that participated in this study — those of Raya, Rafa, Amri, Marsya, and Ayu — shows that the fulfillment of the children's rights is uneven. The caregiving and education indicators were generally only partially fulfilled, while maintenance and basic needs were comparatively better, although not fully met. In contrast, emotional communication and socio-legal protection were the weakest indicators, being unfulfilled in nearly all five cases. These conditions are presented in

Table 1.

Protection Indicator	Raya	Rafa	Amri	Marsya	Ayu
Caregiving	Partially Fulfilled	Partially Fulfilled	Not Fulfilled	Not Fulfilled (Critical)	Partially Fulfilled
Education	Partially Fulfilled	Partially Fulfilled	Not Fulfilled (School Dropout)	Not Fulfilled (Critical)	Partially Fulfilled
Emotional Communication	Not Fulfilled	Not Fulfilled	Not Fulfilled	Not Fulfilled (Critical)	Not Fulfilled
Maintenance and Basic Needs	Partially Fulfilled	Partially Fulfilled	Not Fulfilled	Partially Fulfilled	Partially Fulfilled
Socio-Legal Protection	Not Fulfilled	Partially Fulfilled	Not Fulfilled	Not Fulfilled (Critical)	Not Fulfilled

Table 1. Summary of the Fulfillment Status of Migrant Workers' Children's Rights Based on Five Protection Indicators. Source: Primary interview data, coded jointly by the researchers based on the five operational indicators of child protection described in Section B (see coding rubric above).

The data in Table 1 reveal a pattern that requires serious attention, though — consistent with the limitations noted in Section B — it should be read as a pattern observed within these five cases rather than a population-level claim about migrant-worker families generally. The maintenance and basic-needs indicator outperformed the other indicators because, in the cases examined here, most migrant-worker parents continued to attempt to send money to cover their children's food, clothing, and living expenses. This finding indicates that, in material terms, the migrant-worker parents in these five families in Tanjung Medan Village generally continued to attempt to fulfill their maintenance obligations. Nevertheless, fulfilling material needs does not automatically guarantee the comprehensive fulfillment of children's rights. Emotional

communication emerged as the weakest indicator because in four of the five cases, the children experienced limited communication, a loss of emotional closeness, and a lack of parental assistance in their daily lives. This finding confirms that child protection cannot be reduced to financial considerations because children also require affection, presence, attention, and continuous communication.

The socio-legal protection indicator also revealed concerning conditions, particularly in the cases of Amri and Marsya. Both were categorized as critically unprotected because they experienced serious problems that should have been prevented through supervision mechanisms involving families, schools, village authorities, and religious institutions. Amri's case illustrates the risk of school dropout caused by parental maintenance payments failing to reach the child, while Marsya's case demonstrates social vulnerability stemming from inadequate daily supervision. These conditions indicate that the protection of migrant workers' children in Tanjung Medan Village continues to rely on the independent initiatives of substitute families without systematic support from the state or society. Under the Child Protection Law, however, child protection is not solely the responsibility of the family but also involves the state, regional governments, communities, and relevant institutions (Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, 2014).

From the perspective of Islamic law, the protection of Indonesian migrant workers' children is closely related to the concepts of *hadhanah* and *nafaqah al-awlad*. In *Al-Umm*, Imam al-Shafi'i emphasizes that a child's right to *hadhanah* cannot be disregarded despite certain limitations experienced by the parents, because the caregiving obligation remains attached to them as long as they are capable of fulfilling it (As-Syafi'i, 2016) [author to add volume/page]. Therefore, parents' departure to work abroad cannot be used as a justification for relinquishing their responsibilities for caregiving, education, protection, and the fulfillment of their children's needs. Parents remain obliged to ensure that their children receive appropriate and secure care.

The Head of the Bilah Barat District Office of Religious Affairs explained that Ibn Qudamah's *Al-Mughni* contains important views concerning parents who leave their children for extended periods to work [author to add volume/page]. First, working far from home may be considered *mubah* when it brings legitimate benefits. Second, working far from home may become obligatory when the family's economic circumstances are extremely urgent, provided that the child's maintenance continues to be fulfilled. Third, neglecting children in terms of maintenance, education, and protection remains prohibited. Fourth, parents must ensure the availability of a capable, or *qawwiyah*, substitute caregiver who can perform the functions of *hadhanah*, as also emphasized by Ibn Hazm in *Al-Muhalla* (Hazm, n.d.; Qudamah, 1997) [author to add volume/page for both]. During the interview, the Head of the Office of Religious Affairs stated that working far from home for an extended period is permissible when justified by a legitimate need or benefit, such as earning a livelihood for the family. However, such permission is conditional because it is permissible under Islamic law only when the child's rights to maintenance, education, and care are upheld. Conversely, when a child is neglected because the substitute caregiver is incapable or maintenance payments fail

to arrive, the situation constitutes *tafrith*, namely, negligence prohibited in Islam (Head of the Bilah Barat District Office of Religious Affairs, personal communication, 14 June 2026).

Based on this explanation, leaving a child to earn a livelihood may generally be regarded as *mubah*, but the permission is conditional (*muqayyad*). It becomes *tafrith* when parents fail to ensure the child's maintenance, care, education, and protection. In this context, the principle of *la darara wa la dirar* is relevant because a parent's decision to work abroad must not cause harm or injury to the children left behind. In *Bidayat al-Mujtahid*, Ibn Rushd further explains that child maintenance must be provided *bi al-waqt* and *bi al-kifayah*, meaning that it must be timely and sufficient to meet the child's needs (Ibn Rushd, 2004) [author to add volume/page]. Therefore, delayed or undelivered maintenance, as experienced by Amri and Rafa, constitutes a violation of the underlying parental obligation, even when the underlying fact pattern differs, as discussed further below.

Sayyid Sabiq in *Fiqh al-Sunnah* and Wahbah al-Zuhaili in *Al-Fiqh al-Islami wa Adillatuhu* similarly emphasize that the contemporary understanding of *hadhanah* encompasses the dimensions of *tarbiyah*, namely *ta'lim*, *ri'ayah*, and *tadbir* [author to add volume/page for both]. This means that childcare cannot be limited to the fulfillment of material needs but must also include education, maintenance, guidance, and the proper management of the child's life (Az-Zuhaili, 1989; Sabiq, 1969). The relationship between Article 45 of the Marriage Law, Article 105 of the Compilation of Islamic Law concerning the care of children who have not reached the age of *mumayyiz*, and Article 149(d) of the Compilation of Islamic Law concerning the father's responsibility for child maintenance demonstrates that parental obligations are comprehensive and do not cease because of physical distance (Sekretariat Negara Republik Indonesia, 1991; Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974).

Furthermore, Ibn Qayyim al-Jauziyyah in *Zad al-Ma'ad* emphasizes that parental affection, or *muwaddah*, and parental presence, or *hudur*, are rights of the child that cannot be completely replaced by wealth or long-distance communication (Al-Jauziyyah, 1998) [author to add volume/page]. This view is particularly relevant to Ayu's case, as she continued to experience loneliness despite communicating relatively regularly with both parents by telephone and video call. Thus, the children of Indonesian migrant workers require not only remittances but also emotional presence and certainty of care.

Fatwa of the Indonesian Ulema Council Number 7/MUNAS VI/MUI/2000 further reinforces the importance of protecting migrant-worker families, particularly female migrant workers. The fatwa states that women are generally permitted to work abroad provided that they are accompanied by a *mahram* and that their safety and dignity are guaranteed during employment (Fatwa Nomor 7/MUNAS VI/MUI/2000 Tentang Pengiriman Tenaga Kerja Wanita Ke Luar Negeri, 2000). This remains MUI's operative position on the matter as far as the authors have verified, and no superseding national fatwa was identified; [author to confirm whether MUI has issued any more recent guidance specific to this issue and cite it if so]. This provision corresponds with the

concept of *hisbah*, or collective supervision, as described by Al-Mawardi in *Al-Hawi al-Kabir* (Al-Mawardi, 1999) [author to add volume/page]. This study found that most female migrant workers departed individually without a *mahram*, reinforcing the urgency of supervising migration channels and protecting the families left behind. This principle is also consistent with the *Convention on the Rights of the Child*, which affirms that the best interests of the child must be a primary consideration in all policies and actions concerning children (UNICEF, 2022).

When the field findings are analyzed through this Islamic legal framework, the five children in this study occupy different legal positions. Raya and Rafa continued to receive only partial fulfillment of their basic needs, while their emotional communication needs remained unmet. This condition indicates that their parents' departure had not yet fully developed into *tafrith*, because substitute families continued to attempt to fulfill some of the requirements of *hadhanah*. By contrast, Amri and Marsya experienced more serious failures of protection. Amri dropped out of school because maintenance payments did not arrive, while Marsya experienced social vulnerability due to the absence of direct supervision. From the perspective of Islamic law, the circumstances of Amri and Marsya both fulfill the outward elements of *tafrith* — negligence resulting in the loss of a child's fundamental rights — but, as discussed below, the two cases differ in the kind and degree of fault involved and should not be treated as doctrinally identical.

2. Distinguishing Degrees of Tafrith: Amri and Marsya Compared

Classical usage of *tafrith* denotes a *dereliction* attributable to the responsible party — that is, a culpable falling-short of an owed duty — rather than simply an unfavorable outcome. Applying this standard with greater precision to the two most serious cases in this study yields an important doctrinal distinction. In Amri's case, the maintenance payment failed to reach the family because it was routed through a dishonest intermediary who did not deliver the funds. The fault here is more accurately located in the *selection of an unreliable channel* than in an intention to abandon the child: the parent took an affirmative step to provide maintenance, and the loss arose from the wrongdoing of a third party. Classical fiqh distinguishes between a person's own *taqsir* (negligence) and harm caused by an intervening actor's wrongdoing (*fi'l al-ghayr*); where a person has taken reasonable care in the circumstances available to them, an intervening third party's dishonesty may mitigate, without necessarily eliminating, the parent's culpability — particularly if the choice of channel was itself imprudent, or if the parent failed to verify receipt over time and take corrective action once non-delivery became apparent. On the facts recorded here, Amri's mother does not appear to have taken further corrective steps once it became clear the funds had not arrived, which is the point at which the case moves closer to *tafrith* proper rather than remaining a case of misfortune alone.

Marsya's case presents a doctrinally clearer instance of *tafrith*. The Head of the Bilah Barat District Office of Religious Affairs confirmed that Marsya's mother was aware of her daughter's circumstances but did not immediately return to provide physical protection (Head of the Bilah Barat District Office of Religious Affairs, personal

communication, 14 June 2026). Here, the element of *taqsir* is direct: awareness of risk combined with a failure to act is a paradigm case of dereliction in the classical sense, distinguishable from Amri's case precisely because it does not depend on an intervening third party's wrongdoing. Treating the two cases as equivalent, undifferentiated instances of *tafrith* would obscure this distinction and understate the comparative severity of a parent's conscious inaction relative to a good-faith but poorly safeguarded attempt at maintenance that was defeated by a third party's dishonesty. This study accordingly treats Marsya's case as a clearer and more direct instance of *tafrith*, and Amri's case as one that moves toward *tafrith* only once the failure to take corrective action after non-delivery becomes apparent.

3. Individual and Collective Responsibility: A Necessary Separation

A related clarification is required regarding the relationship between individual parental *tafrith* and the collective institutional failure documented in this study, particularly the absence of village-level data on migrant-worker families. These operate as distinct legal-ethical claims at different levels and should not be merged into a single, undifferentiated finding of “failure.” Personal *taqsir* concerns whether a specific parent met the individually owed duties of *hadhanah* and maintenance, and is assessed against that parent's own conduct, knowledge, and available alternatives, as discussed above for Amri and Marsya. By contrast, the obligation examined under *maqasid al-sharia* — particularly *hifz al-nasl* and *hisbah* — is an institutional and collective obligation resting on the state, village government, schools, and religious institutions to establish the structural conditions (data collection, monitoring, early-warning systems) within which individual families' caregiving arrangements can be supported and, where necessary, corrected before harm occurs. The village government's failure to maintain data on migrant-worker households is a *hisbah*-level, collective failure; it does not by itself excuse or aggravate an individual parent's personal *tafrith*, though the two failures compounded one another in the cases of Amri and Marsya. Keeping these two levels of responsibility analytically separate — rather than treating “the system failed” and “the parent failed” as a single claim — allows each to be evaluated, and addressed through policy, on its own terms.

4. Implications of Indonesian Migrant Workers for the Fulfillment of Children's Rights and Measures to Address Them

In this study, the implications of Indonesian migrant workers for the fulfillment of children's rights refer to the direct and indirect consequences arising from parental absence in children's lives. These implications do not occur independently but form a chain of cause and effect beginning with the parents' decision to work abroad and subsequently affecting caregiving patterns, educational continuity, emotional conditions, adequacy of maintenance, and children's social vulnerability. Based on interviews and field observations, five principal implications were identified within the five families studied.

The first implication is the transfer of caregiving responsibilities to substitute family members who are not fully capable of performing ideal caregiving functions. Raya, a 17-year-old child (pseudonym), had been left by her mother, who worked in

Malaysia, since she was under two years old and was cared for by her 72-year-old grandmother, Masariah (pseudonym). Masariah could fulfill Raya's basic needs but could not assist with school assignments because she had not completed primary school. Raya also no longer communicated with her biological father. Rafa, a 12-year-old child (pseudonym), experienced a similar situation and was cared for by her 50-year-old grandmother, whose health was poor. In her daily life, Rafa was assisted by a younger relative who supervised her after school. Rafa's grandmother explained that the primary responsibility rested with Rafa's mother, while her father had never provided maintenance. She also acknowledged her limitations in assisting Rafa's education because of her age and limited educational background, stating that the most important effort she could make was to ensure that her granddaughter had food and clothing, while schoolwork and learning assistance could only be provided within her limited capabilities (Rafa's Grandmother, personal communication, 2 April 2026).

The most critical circumstances were found in the case of Amri, a 15-year-old child (pseudonym) who had dropped out of school. Amri and his three siblings were placed under the care of their aunt, who also had four biological children. The ratio of one adult caregiver to seven children under limited economic circumstances resulted in extremely limited supervision of each child. Marsya (pseudonym) also experienced concerning conditions because she lived near her aunt, though she was not always under direct supervision. Although the aunt was a close relative by descent, the intensity of caregiving remained low because they did not live in the same household. As a result, Marsya frequently experienced daily life without adequate assistance or supervision.

In addition to caregiver availability, the economic capacity of substitute households also determined the quality of care. In Rafa's case, her grandmother worked as an agricultural laborer with an irregular income. The money sent by Rafa's mother was not allocated exclusively to Rafa's needs; it was also used to cover the living expenses of the grandmother with whom she resided. This situation demonstrates that remittances sent by migrant-worker parents are not always sufficient to guarantee ideal caregiving, since the allocation of limited funds leaves substitute families financially vulnerable to economic pressures.

These four cases reveal a broadly similar pattern: caregiving responsibilities were transferred to individuals whose age, physical condition, education, and number of dependants did not always place them in an ideal position to perform the functions of *hadhanah*. The grandmothers caring for Raya and Rafa faced limitations related to age, education, and health. Meanwhile, the aunt caring for Amri had to divide her attention among her four biological children. Marsya's circumstances were even more concerning because she did not have a caregiver who actually lived in the same household. When examined in relation to Ibn Qudamah's requirement that a substitute caregiver be *qarwiyyah*, this requirement had not been fulfilled from the outset in the cases of Amri and Marsya. Consequently, the risk of *tafrith* could have been anticipated before its consequences became apparent. [Author: please add a brief synthesis of the corresponding accounts from the remaining substitute caregivers and migrant-worker parents not narrated individually above — i.e., Amri's, Marsya's, and Ayu's parents, and Amri's and Ayu's caregivers — noting whether their circumstances corroborate or

diverge from this pattern, so that the case-based findings are not limited to the two grandmothers and one aunt discussed by name here.]

The second implication is limited communication, which results in emotional deprivation among children. Marsya stated that although her material needs were relatively met, her mother's presence could not be replaced by money remitted. She explained that although money was generally available, her mother had no time for her, was difficult to contact, rarely responded to messages or calls, and usually contacted her only approximately once a month. Marsya also stated that she frequently wanted to discuss school, friends, and other ordinary matters, but her mother rarely had time to call because of work. Consequently, although she did not experience material deprivation, she continued to feel lonely because she had no one with whom she could genuinely speak every day (Marsya, personal communication, 18 June 2026).

The findings concerning Ayu, an only child (pseudonym) whose parents both worked as Indonesian migrant workers, demonstrate that even frequent communication cannot necessarily fulfill a child's emotional needs. Ayu continued to feel sad when her parents were physically absent from important occasions, such as school activities and report card distribution. Video calls and phone communication could therefore help maintain relationships but could not fully replace parents' presence during important moments in their children's lives.

The third implication concerns education, as demonstrated by Amri, who was forced to leave school because the money his mother sent through an intermediary never arrived. Amri explained that his decision to leave school was caused not only by an inability to pay school fees but also by his and his siblings' reluctance to continue burdening their aunt, who also had biological children. Because the money their mother sent was unclear and never reached them, Amri decided to leave school and begin working to help meet their daily needs (Amri, personal communication, 17 February 2026). The absence of a fee waiver or financial relief from the school before Amri left and began working as an oil-palm harvester in Riau demonstrates a lack of an early-warning system to identify school-dropout risks among the children of Indonesian migrant workers. As noted above, the responsibility for this outcome is best understood as shared between the intermediary's dishonesty, the mother's apparent failure to take corrective action once non-delivery became evident, and the school's lack of a mechanism for flagging at-risk students — rather than as a single, undifferentiated parental failure. This circumstance is consistent with findings that weak institutional and governmental roles in anticipating child exploitation and neglect are partly caused by limited coordination and supervision across institutions (Rizki et al., 2025).

Amri's case reveals a serious gap in the formal education system at the primary and secondary levels, namely the absence of a specific mechanism for identifying students from Indonesian migrant-worker families as a group at risk of leaving school. Had the school maintained data concerning its students' family backgrounds, the delayed payment of school fees experienced by Amri and his siblings could have served as an early warning for the school to investigate their circumstances. This situation confirms that educational problems affecting migrant workers' children are not solely

family economic problems but also institutional problems related to weak school supervision and assistance — a *hisbah*-level failure distinct from, though compounding, the household-level difficulties described above.

The fourth and most critical implication is the social vulnerability experienced by Marsya, who lived alone without direct supervision and experienced pregnancy outside marriage. Marsya's aunt, who acted as her caregiver, explained that Marsya lived alone in the house, while the aunt merely lived nearby and did not share the same household. Because she was unable to supervise Marsya continuously and Marsya's parents were working far abroad, the aunt planned to arrange Marsya's marriage as soon as possible, considering it the best solution so that another person would assume responsibility for her (Marsya's Aunt, personal communication, 14 June 2026). This response demonstrates that the substitute family experienced uncertainty in addressing the child's social vulnerability; the proposed solution tended to be practical and family-based rather than pursued through formal child-protection mechanisms.

The Head of the Bilah Barat District Office of Religious Affairs confirmed that Marsya's case constituted *tafrith* in the performance of *hadhanah*, as discussed above, because Marsya's mother was aware of her daughter's circumstances but did not immediately return to provide physical protection. The Head of the Office of Religious Affairs also emphasized that the marriage of a person under 19 years of age cannot be conducted solely on the basis of a family agreement; it must proceed through a marriage dispensation issued by the Religious Court and involve a child-protection institution, because the individual remains legally categorised as a child. According to the informant, the legal process must still be followed to protect the child's rights, even when the family has good intentions in arranging the marriage (Head of the Bilah Barat District Office of Religious Affairs, personal communication, 14 June 2026).

Within the framework of *maqasid al-sharia*, particularly *hifz al-nasl*, or the protection of lineage and future generations, as explained by Al-Ghazali in *Al-Mustasfa*, Marsya's case constitutes a clear failure by the family, community, and state to protect future generations (Al-Ghazali, 1989) [author to add volume/page]. This finding aligns with the view that decisions concerning child custody and care must be directed towards the child's best interests so that the objective of Islamic law, represented by *hifz al-nasl*, can be effectively achieved (Faizzati, 2024). Marsya's case reflects an accumulation of protection failures, including inadequate caregiving, the absence of daily supervision, limited communication with the biological parent, and a family response that viewed marriage as an immediate solution. However, a purely family-based resolution may disregard the child's rights as guaranteed by positive and Islamic law.

The fifth implication concerns the misuse of maintenance-transfer channels. Money intended for Amri's family did not arrive because it had been sent through an untrustworthy intermediary. This situation differed from Zainal's (pseudonym), one of the Indonesian migrant-worker parents interviewed, who chose to send money directly to the caregiver's bank account without using an intermediary. Zainal explained that he had previously used an intermediary, but the money had once been delayed for several weeks without any clear explanation; since then, he had transferred the money directly

to the caregiver's account in the village because he considered the method safer and could ensure that the money actually arrived and was used for the child's needs (Zainal, personal communication, 20 February 2026). This practice may serve as a policy reference for preventing similar misuse, consistent with studies highlighting the vulnerability of Indonesian female migrant workers to abuse by third parties, including recruitment and remittance agents (Yumna et al., 2024).

All these implications are aggravated by the absence of state involvement at the lowest level of government. A Tanjung Medan Village official confirmed that the village did not possess data on household heads working as Indonesian migrant workers, had no data on children left behind, did not implement the Productive Migrant Village Program, allocated no village budget for assisting migrant workers' children, and was unaware of Amri's school-dropout case or Marsya's social vulnerability. These circumstances confirm that the gap between regulation and field realities is a systemic problem requiring comprehensive intervention (Purwidiarso, 2024). As discussed above, this systemic gap operates at the collective, *hisbah*-level of responsibility and is analytically distinct from — while compounding — the individual parental *tafrith* discussed in the cases of Amri and Marsya.

Efforts to protect the children of Indonesian migrant workers in Bilah Barat District require a comprehensive approach encompassing seven principal aspects. First, policies under the Child Protection Law and the Indonesian Migrant Workers Protection Law must be integrated. Second, the village government's role in collecting data and monitoring migrant-worker families must be strengthened. Third, the Productive Migrant Village (*Desa Migran Produktif/Desmigratif*) program must be implemented in accordance with its governing regulation, the Regulation of the Minister of Manpower Number 2 of 2019 concerning the Empowerment of Indonesian Migrant Worker Communities in Productive Migrant Villages. Fourth, maintenance-transfer channels must be supervised by encouraging direct transfers to trusted family members or caregivers. Fifth, child-marriage cases must be formally handled through marriage dispensations issued by the Religious Court and the involvement of child-protection institutions. Sixth, educational institutions must establish an early-warning system for identifying children at risk of leaving school. Seventh, the role of the Office of Religious Affairs must be optimized to assist migrant-worker families in line with *maqasid al-sharia*, particularly the principle of *hifz al-nasl*.

These seven measures are interconnected and cannot be implemented separately. Accurate village-level data collection constitutes the foundation for the effectiveness of the Productive Migrant Village Program and religious assistance. Transparency in maintenance transfers must be accompanied by education for migrant workers and substitute families. The involvement of the Office of Religious Affairs is also important, as local communities place considerable trust in religious authorities in resolving family problems. Therefore, synergy among regulations, village institutions, educational institutions, religious institutions, and Islamic legal values is required to ensure the sustainable protection of Indonesian migrant workers' children.

The findings and discussion demonstrate that the protection of Indonesian migrant workers' children in Bilah Barat District involves multiple interconnected problems. Normatively, the Child Protection Law and Islamic law, through the concepts of *hadhanah* and child maintenance, provide a strong legal foundation. In practice, however, a significant gap remains, as demonstrated by Amri's school dropout and Marsya's social vulnerability. The most fundamental finding is the absence of a structural role for the village government, as the lack of data on Indonesian migrant-worker families has obstructed the implementation of the Productive Migrant Village Program in Tanjung Medan Village. From the perspective of *maqasid al-sharia*, the principles of *hifz al-nasl* and *hisbah* affirm that child protection is not solely a family responsibility but also a collective obligation of the state and society — an obligation distinct from, though it interacts with, the individual parental *tafrith* discussed above. Addressing these problems, therefore, requires integrated policy interventions that combine positive law, Islamic law, and the active participation of grassroots institutions.

D. CONCLUSION

The protection of Indonesian migrant workers' children in Bilah Barat District has a strong normative legal foundation in Law Number 35 of 2014 concerning Child Protection, the Marriage Law, the Compilation of Islamic Law, and Islamic legal principles concerning *hadhanah* and child maintenance. However, the findings indicate that such protection has not been optimally implemented in the lives of the children left behind. The fulfillment of children's rights remains partial, particularly regarding caregiving, education, maintenance, emotional communication, and socio-legal protection. Migrant workers' children continue to depend on substitute families that do not always possess adequate caregiving capacity in terms of age, economic circumstances, education, and supervision. From the perspective of Islamic law, parents' departure to work abroad may be classified as *mubah* as long as the children's rights remain fulfilled; it may develop into *tafrith* when it results in negligence concerning caregiving, education, maintenance, and child protection — though, as this study's closer analysis of the Amri and Marsya cases shows, the degree and directness of that negligence can differ depending on whether the failure stems from the parent's own conscious inaction or is substantially mediated by an intervening third party's wrongdoing.

The implications of Indonesian labor migration for the fulfillment of children's rights in Bilah Barat District are reflected in inadequate substitute caregiving, emotional deprivation, educational vulnerability, the misuse of maintenance-transfer channels, and social risks, including child marriage resulting from weak supervision. Amri's school dropout and Marsya's social vulnerability demonstrate a clear gap between legal norms and the realities of child protection at the village level. This gap is aggravated by the absence of data on migrant-worker families, the failure to implement the Productive Migrant Village Program, and the lack of specific assistance mechanisms for migrant workers' children. Therefore, their protection must be strengthened through village-level data collection, supervision of maintenance transfers, early detection of school

dropout risks in educational institutions, the formal handling of child marriage cases through the Religious Court and child protection institutions, and the optimization of the Office of Religious Affairs' role in assisting families in line with *maqasid al-sharia*. The principles of *hifz al-nasl* and *hisbah* affirm that child protection is not solely a family responsibility but also a collective obligation of the state, society, schools, and religious institutions — an obligation this study treats as analytically distinct from, though closely interacting with, individual parental responsibility.

This study is limited by its reliance on a small, purposive sample of five migrant-worker families in a single village; its case-based findings should accordingly be read as illustrative of patterns within these families rather than as generalizable claims about migrant-worker families in Bilah Barat District or Indonesia more broadly. Future research is recommended to test the five-indicator framework and the *mubah-muqayyad-tafrith* classification proposed here against a larger and more diverse sample of families and localities, and to further develop the distinction between individually attributable *tafrith* and collective, institution-level failure introduced in this study.

REFERENCES:

- Al-Ghazali, A. H. M. ibn M. (1989). *Al-Mustasfa min 'ilm al-usul* [vol./page to be added]. Dar al-Kutub al-Ilmiyyah.
- Al-Jauziyyah, M. ibn A. B. ibn A. I. Q. (1998). *Zad al-ma'ad fi hadyi khayr al-'ibad* [vol./page to be added]. Pustaka Azzam.
- Al-Jaziri, A. al-Rahman. (2003). *Kitab al-fiqh 'ala al-madhahib al-arba'ah* [vol./page to be added]. Dar al-Fikr.
- Al-Mawardi, A. al-Hasan. (1999). *Al-Hawi al-Kabir* [vol./page to be added]. Dar al-Kutub al-Ilmiyyah.
- Ardiansyah, R., Putra, B. M., & Widia, W. (2022). Kondisi Sosial Ekonomi dan Pendidikan Anak dalam Rumah Tangga Tenaga Kerja Wanita (TKW). *JlIP - Jurnal Ilmiah Ilmu Pendidikan*, 5(11), 5134–5142. <https://doi.org/10.54371/jiip.v5i11.1160>
- As-Syafi'i, M. bin I. (2016). *Al-Umm* [vol./page to be added]. Dār al-Ma'rifah.
- Az-Zuhaili, W. M. (1989). *Al-Fiqh al-Islami wa adillatuhu* [vol./page to be added]. Dar al-Fikr.
- Faizzati, S. D. (2024). Hak Asuh Anak (Hadhanah) bagi Ibu yang Menikah lagi Prespektif Maqashid Syari'ah. *Afkaruna: International Journal of Islamic Studies (AIJIS)*, 1(2), 278–293. <https://doi.org/10.38073/aijis.v1i2.2471>
- Fatwa Nomor 7/MUNAS VI/MUI/2000 tentang Pengiriman Tenaga Kerja Wanita ke Luar Negeri.
- Hazm, A. M. A. ibn A. ibn S. I. H. al-Andalusi. (n.d.). *Al-Muhalla bi al-athar* [vol./page to be added]. Dar al-Fikr.

- Ibn Rushd, A. al-W. M. ibn A. (2004). *Bidayatul mujtahid wa nihayatul muqtashid* [vol./page to be added]. Pustaka Al-Kautsar.
- Kementerian Agama Republik Indonesia. (2019). *Al-Qur'an dan Terjemahannya*. Lajnah Pentashihan Mushaf Al-Qur'an.
- Mardiyanto, I. (2024). Perlindungan hukum internasional terhadap anak luar kawin pekerja migran Indonesia: Analisis kritis penerapan prinsip non-diskriminasi. *PROGRESIF: Jurnal Hukum*, 18(1), 132–166. <https://doi.org/10.33019/progresif.v18i1.5119>
- Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 2 Tahun 2019 tentang Pemberdayaan Komunitas Pekerja Migran Indonesia di Desa Migran Produktif. (2019).
- Purwidiarso, W. (2024). *Tinjauan hukum terhadap perlindungan pekerja migran Indonesia berdasarkan Undang-Undang Nomor 18 Tahun 2017* [Tesis]. Universitas Islam Sultan Agung Semarang.
- Qudamah, A. ibn A. ibn M. I. Q. al-Maqdisi. (1997). *Al-Mughni fi fiqh al-Imam Ahmad ibn Hanbal* [vol./page to be added]. Dar al-Fikr.
- Rizki, R., Yusuf DM, M., & Andrizal. (2025). Perlindungan hukum bagi anak korban eksploitasi seksual. *Collegium Studiosum Journal*, 8(1), 278–293. <https://doi.org/10.56301/csj.v8i1.1714>
- Sabiq, S. (1969). *Fiqh al-sunnah* [vol./page to be added]. Dar Al-Fikr.
- Sekretariat Negara Republik Indonesia. (1991). *Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam*.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, Pub. L. No. Undang-Undang Republik Indonesia Nomor 1 Tahun 1974, LN.1974/No.1; TLN No.3019, 26 hlm. (1974).
- Undang-Undang Republik Indonesia Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia, Pub. L. No. Undang-Undang Republik Indonesia Nomor 18 Tahun 2017, LN.2017/No.242; TLN No.6141, 54 hlm. (2017).
- Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, Pub. L. No. Undang-Undang Republik Indonesia Nomor 35 Tahun 2014, LN.2014/No.297; TLN No.5606, 48 hlm. (2014).
- UNICEF. (2022). *Convention on the Rights of the Child: Text of the Convention*. United Nations Children's Fund.
- Yumna, L. N., Indah, D., & Saputro, H. D. (2024). Perlindungan hak perempuan pekerja migran Indonesia yang menjadi penyintas kekerasan berbasis gender (KBG) ditinjau dari Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). *Rechtswetenschap: Jurnal Mahasiswa Hukum*, 1(2). <https://doi.org/10.36859/rechtswetenschap.v1i2.2539>